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November 21, 2016

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: In the Matter of Richard F. Klineburger
Docket No. DRB 16-304
District Docket No. XIV-2013-0385E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate discipline for respondent's violation of RPC 1.1(a) (gross neglect) and RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter). Chair Frost recused herself.

Specifically, on June 3, 2012, Sheena Monnin was eliminated as a contestant after the first round of competition in the Miss Universe pageant. Thereafter, but before the final round of competition had commenced, another contestant told Monnin that she had seen a document listing the top five contestants. Indeed, the top five contestants were those whose names had appeared on that list. Monnin immediately resigned her position as Miss Pennsylvania USA and proceeded to claim, through Facebook posts and an appearance on The Today Show, that the Miss Universe pageant was "rigged."

On June 25, 2012, the Miss Universe Organization (MUO) filed an arbitration demand, seeking \$10 million in compensatory damages from Monnin for breach of contract, among other claims. The contract was an agreement between Monnin and MUO. Monnin's copy of the document was not signed by either party.

On June 27, 2012, Monnin retained respondent to represent her for the purpose of asserting a claim against MUO on her behalf, in addition to defending its claim against her. Because Monnin's copy of the contract was unsigned, respondent advised her that she was not bound by any agreement to arbitrate, that MUO could not compel her to appear at an arbitration, and, therefore, that she was not obligated either to reply to any communications from the arbitrator or to attend any arbitration hearing.

Between late June and November 5, 2012, respondent repeatedly notified MUO and the arbitrator that he represented Monnin, that she was not subject to the contract, and that she would not participate in any arbitration. In late August, 2012, he instructed the arbitrator to cease direct contact with Monnin, as she was represented by counsel.

Thereafter, respondent failed to comply with discovery requests in the arbitration matter; failed to submit Monnin's share of the arbitration fee, despite receiving a bill; and failed to inform Monnin of a scheduled November 5, 2012 arbitration hearing. Monnin believed that MUO had withdrawn its arbitration demand. Respondent informed the arbitrator that Monnin would not appear at the hearing.

Neither respondent nor Monnin appeared for the November 5, 2012 arbitration hearing. On December 13, 2012, respondent received a copy of the final arbitration award, granting MUO \$5 million in damages. On December 17, MUO filed, in the United States District Court for the Southern District of New York, a petition to confirm and convert the arbitration award into a judgment. At that point, Monnin retained new counsel, who filed a cross-motion to vacate the award due to respondent's ineffective assistance of counsel, which was based on respondent's own supporting declaration.

On July 2, 2013, the federal district court denied the motion to vacate and confirmed the \$5 million arbitration award. Miss Universe L.P., LLLP. v. Sheena Monnin, 952 F.Supp.2d 591 (S.D.N.Y. 2013). In its written opinion, the court criticized respondent for his failure to communicate with Monnin and acknowledged that the "dire

consequences" that had befallen her were "due, in no small part, to her counsel's ineptitude."

On October 31, 2013, Monnin, through counsel, filed a malpractice action against respondent and the firm, in the Superior Court of New Jersey. On July 11, 2014, the parties entered into a settlement agreement and mutual release. Although its terms were confidential, the OAE and respondent stipulated that the agreement "subsequently was used to fully satisfy" the \$5 million judgment entered against Monnin in the federal court action. On August 25, 2014, Monnin's malpractice complaint against respondent and the firm was dismissed with prejudice. Monnin was satisfied with the result.

The parties stipulated to respondent's violation of RPC 1.1(a), based on his advice to Monnin that she was not obligated to go forward with the arbitration, and RPC 1.4(b), based on his failure to inform Monnin that the arbitration was going forward.

The stipulation identifies several mitigating factors: respondent's unblemished disciplinary record in more than twenty years of practice; his cooperation with the OAE's investigation; his father's "life changing medical diagnosis" (which required respondent to devote a tremendous amount of time and attention to winding down his father's business, assisting with the preparation of his father's Social Security Disability application, and staving off his father's creditors in order to avoid bankruptcy); respondent's devotion to a substantial number of pro bono clients; his extensive participation in community organizations; and his receipt of multiple awards in recognition of his service to others. Further, the stipulation notes that respondent's father's illness took an emotional toll on respondent and that the negative publicity generated by the Monnin case adversely affected his ability to generate business.

Finally, the authors of twenty-six character letters, written by both colleagues and clients, attested to respondent's selfless generosity of both spirit and time to clients and community, as well as his skill as a lawyer.

Based on the above, the Board found that respondent violated RPC 1.1(a) by making no effort to determine whether a signed copy of the agreement between Monnin and MUO existed. Instead, he chose to ignore the arbitration proceeding, based on rank speculation, exposing his client to a \$5 million judgment. In the Board's view, such conduct was not only grossly negligent; it was reckless.

Respondent also violated RPC 1.4(b). Although he was quick to inform the arbitrator that Monnin would not appear for the arbitration hearing, he never informed his client that she was expected to do so and that the proceeding would go forward in her absence. Respondent had no reason to believe that Monnin would have been aware of the proceeding, independently of him, because he had forbidden the arbitrator from communicating with her directly.

Although an admonition is the typical quantum of discipline imposed on attorneys who exhibit gross neglect and fail to communicate with their clients, the Board determined that, as stipulated, a reprimand is appropriate. In the Board's view, the mitigation was far outweighed by respondent's recklessness and the egregious financial harm to his client, that is, a \$5 million judgment. Although the judgment was eventually satisfied, presumably by respondent's professional liability carrier, that did not occur until more than two years after judgment was entered against Monnin. Moreover, she was forced to file a lawsuit against respondent in order to achieve that result.

Reprimands have been imposed in similar cases, based on harm to the client. See, e.g., In re Sachs, 223 N.J. 241 (2015) (attorney represented two sisters in the sale of a home, against which two liens had attached; the title company required the amount of the liens to be held in escrow, and the sisters provided the funds; despite his promise to do so, the attorney did not negotiate the payoff of the judgments, leaving the title company to do so using the escrowed monies, and retaining the balance as its fee; the attorney neither obtained a bill from the title company, justifying its fee, nor told his clients that the title company had taken a fee; he also failed to return one of the client's telephone calls for several years after the escrow funds had been disbursed; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b)); In re Calpin, 217 N.J. 617 (2014) (attorney failed to oppose the plaintiff's motion to strike his client's answer, resulting in the entry of a final judgment of about \$80,000 against his client; the attorney never informed his client of the judgment; notwithstanding the presence of some mitigation in the attorney's favor, he received a reprimand because of the "obvious, significant harm to the client," that is, the judgment); In re Burstein, 214 N.J. 46 (2013) (attorney allowed a client's personal injury complaint to be dismissed for lack of prosecution; filed an appeal, which was dismissed for failure to file a brief; and failed to inform the client of these events; attorney was found guilty of lack of diligence, gross neglect, and failure to communicate with the client; although the attorney had no disciplinary record, the

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significant economic harm to the client justified a reprimand); and In re Uffelman, 200 N.J. 260 (2009) (attorney was found guilty of gross neglect, lack of diligence, and failure to communicate with his client; the attorney represented the defendant in an employment dispute and allowed the client's answer to be dismissed for the attorney's failure to comply with discovery requests; allowed a default judgment to be entered against the client; failed to inform the client of those events or that a motion to enforce litigant's right had been filed; and failed to file a motion to vacate the judgment; although the attorney had no disciplinary record, the reprimand was premised on the extensive harm caused to the client, who was forced to shut down his business for three months because of the attorney's failure to represent the client's interests diligently and responsibly).

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated August 29, 2016.
2. Stipulation of discipline by consent, dated August 30, 2016.
3. Affidavit of consent, dated June 21, 2016.
4. Ethics history, dated November 21, 2016.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

c: (w/o encs.)
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Disciplinary Review Board
Charles Centinaro, Director
Office of Attorney Ethics
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